उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.612 OF 2006

APPELLANT — Kashiram, son of Ratiram, aged about 29 years, resident of Village Nandpura, Gudipara, P.S. Bhanpuri, District Bastar.

Vs

RESPONDENT — State of Chhattisgarh, Police Station Bodhghat, District Bastar

CRIMINAL APPEAL NO.613 OF 2006

APPELLANT — Lakheshwar, son of Balku, aged about 36 years, resident of Village Nandpura, Gudipara, P.S. Bhanpuri, District Bastar.

Vs

RESPONDENT — State of Chhattisgarh, Police Station Bodhghat, District Bastar

---

Present:

Mr. Anand Gupta, Advocate for the appellant in Cr.A. No. 612/06.

Mr. Ashok Mishra, Advocate for the appellant in Cr.A. No. 613/06.

Mr. G.K. Beriwal, Dy. Adv. General for the respondent-State.

ORAL JUDGMENT

(7th September, 2007)

Per Dhirendra Mishra, J:

Criminal Appeal No.612/06 filed by appellant-Kashiram and Criminal Appeal No.613/06 filed by appellant-Lakheshwar are being

GRPRJ — FS/246— 2/2007 — 50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

decided by this common judgment, as both these appeals are directed against the judgment dated 27.7.2006 passed in Sessions Trial No.47/05 whereby learned Special Judge, N.D.P.S. Act, Bastar at Jagdalpur has convicted the appellants under Section 20(b) (ii)(b) of the Narcotics Drug & Psychotropic Substances Act, 1985 (for short 'the Act') and sentenced each of them to undergo R.I. for 2 years and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for 6 months.

Case of the prosecution, in brief, is that on 28.11.2005 at about 9.45 p.m the Station House Officer, Police Station Bodhghat received secret information that two persons are sitting in the new bus stand carrying cannabis (Ganja). The said information was recorded in the daily diary and Suchna Panchnama of Ex.P-18 was prepared in the presence of witnesses. Information was also forwarded to the City Superintendent of Police vide Ex.P-19 and thereafter the policy party proceeded for the place of incident around 22.20 hrs. Independent witnesses Rajesh Sahu (PW-2) & Suresh Soni (PW-3) were called. The appellants were sitting in the waiting room of bus stand and both of them were carrying one bag each. The Investigating Officer served them with the notice of Ex.P-3 informing them that they intend to search them and if they want to be searched by any gazette officer, they may take them to such officer. However, the appellants

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

expressed their consent to be searched by the police office and thereafter, after giving their personal search, they searched the bags of accused persons and found cannabis like substance in both the bags. The contraband was weighed on the spot and it was found that appellant-Kashiram was having 3 Kg and appellant Lakeshwar was having 2 Kg of cannabis. Two samples from each bag were taken out and thereafter panchnama was prepared. The samples were sealed and marked. Thereafter, the accused persons were brought to the police station and FIR of Ex.P-24 was lodged. Seized contraband was stored in the Maalkhana for safe custody and the samples were sent for chemical examination to Forensic Science Laboratory vide Ex.P-28 and after investigating the charge sheet was filed.

Conviction of the appellants is based on the statement of Investigating Officer Shri O.P. Singh (PW-5) as also on the statement of panchanama witnesses Rajesh Sahu (PW-2) and Suresh Soni (PW-3)

Learned counsel for the appellants submits that from perusal of the statement of panchnama witnesses it would be evident that the witnesses were present on the place of incident only from 10 to 10.30 p.m., whereas, from perusal of the seizure memo as also statement of Investigating Officer, it would be evident that the police party reached the place of incident at 11.00 p.m. and therefore, the version given by the witnesses and Investigating Officer are contradictory to

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक.....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — २ —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

each other and the court below has committed illegality by relying upon their statements. He also pointed towards the discrepancy present in the statement of Investigating Officer, who has stated that after completing seizure and preparing panchnama, they returned to the police station with the accused persons & witnesses in the following day at 3.05 a.m. However, from perusal of the statement of witnesses it would be evident that they left the place of incident at 10.30 p.m.

On the other hand, learned Dy. Adv. General for the State supports the impugned judgment.

I have heard learned counsel for the parties.

From the statement of Investigating Officer it is evident that after completing the mandatory provisions of the Act under Sections 42, 50 & 57 a seizure of contraband was effected from the place of incident in the presence of independent witnesses. Statement of Investigating Officer is duly corroborated by the statement of independent panch witnesses, who have stated that they were called by the police on the place of incident, seizure of Ganja was effected in their presence and they had signed the seizure memo whereby 3kg & 2kg of Ganja was seized from the possession of accused persons.

In view of the statement of the Investigating Officer, which finds support from the statement of independent witnesses and which

(180)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

also finds support from the documents prepared during investigation as also the FIR lodged after the seizure, this court is of the considered opinion that the statement of witnesses cannot be discarded simply because of some anomalies regarding timing of the incident, as the said anomalies can occur when the witnesses are examined after the certain period of incident.

In the light of the above discussion, there is no illegality or infirmity in the impugned judgment whereby the appellants have been convicted and sentenced, as described in Para 1 of this judgment.

In the result, the appeals of the appellants fail and accordingly, the same are hereby dismissed.

Sd/-
DHIRENDRA MISHRA
Judge